

QUINN EMANUEL URQUHART & SULLIVAN, LLP

Diane M. Doolittle (CA Bar No. 142046)  
dianedoolittle@quinnemanuel.com  
555 Twin Dolphin Drive, 5th Floor  
Redwood Shores, CA 94065  
Telephone: (650) 801-5000  
Facsimile: (650) 801-5100

Andrew H. Schapiro (admitted *pro hac vice*)  
andrewschapiro@quinnemanuel.com  
191 N. Wacker Drive, Suite 2700  
Chicago, IL 60606  
Telephone: (312) 705-7400  
Facsimile: (312) 705-7401

Stephen A. Broome (CA Bar No. 314605)  
stephenbroome@quinnemanuel.com  
Viola Trebicka (CA Bar No. 269526)  
violatrebicka@quinnemanuel.com  
865 S. Figueroa Street, 10th Floor  
Los Angeles, CA 90017  
Telephone: (213) 443-3000  
Facsimile: (213) 443-3100

Josef Ansorge (admitted *pro hac vice*)  
josefansorge@quinnemanuel.com  
1300 I. Street, N.W., Suite 900  
Washington, D.C. 20005  
Telephone: 202-538-8000  
Facsimile: 202-538-8100

Jonathan Tse (CA Bar No. 305468)  
jonathantse@quinnemanuel.com  
50 California Street, 22nd Floor  
San Francisco, CA 94111  
Telephone: (415) 875-6600  
Facsimile: (415) 875-6700

Jomaire A. Crawford (admitted *pro hac vice*)  
jomairecrawford@quinnemanuel.com  
51 Madison Avenue, 22nd Floor  
New York, NY 10010  
Telephone: (212) 849-7000  
Facsimile: (212) 849-7100

*Attorneys for Defendant Google LLC*

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

CHASOM BROWN, WILLIAM BYATT,  
JEREMY DAVIS, CHRISTOPHER  
CASTILLO, and MONIQUE TRUJILLO,  
individually and on behalf of all similarly  
situated,

Plaintiffs,

v.

GOOGLE LLC,  
Defendant.

Case No. 5:20-cv-03664-LHK-SVK

**GOOGLE LLC'S ADMINISTRATIVE  
MOTION TO SEAL RESPONSES AND  
OBJECTIONS TO SPECIAL MASTER'S  
REPORT AND ORDERS ON REFERRED  
DISCOVERY ISSUES**

Referral: Hon. Susan van Keulen, USMJ

## I. INTRODUCTION

Pursuant to Civil Local Rules 7-11 and 79-5, Defendant Google LLC (“Google”) respectfully seeks to seal certain portions of Google’s Responses and Objections to Special Master’s Report and Orders on Referred Discovery Issues (Dkt. 299) (the “Objection”) and supporting documents, which contain non-public, sensitive confidential and proprietary business information that could affect Google’s competitive standing and may expose Google to increased security risks if publicly disclosed. This information is highly confidential and should be protected.

This Administrative Motion pertains for the following information contained in the Opposition and supporting documents:

Document	Portions to be Filed Under Seal	Party Claiming Confidentiality
Google’s Responses and Objections to Special Master’s Report and Orders on Referred Discovery Issues	Portions highlighted in yellow at: 2:19-21; 3:2-7; 3:9; 3:13; 3:15; 4:8; 4:18-21; 5:3-4	Google
Exhibit 1	Entire document	Google
Exhibit 2	Entire document	Google
Exhibit 3	Entire document	Google
Exhibit 4	Entire document	Google

## II. LEGAL STANDARD

A party seeking to seal material must “establish[] that the document, or portions thereof, are privileged, protectable as a trade secret or otherwise entitled to protection under the law” (*i.e.*, is “sealable”). Civ. L.R. 79-5(b). The sealing request must also “be narrowly tailored to seek sealing only of sealable material.” *Id.*

In the context of dispositive motions, materials may be sealed in the Ninth Circuit upon a showing that there are “compelling reasons” to seal the information. *See Kamakanav. City & Cty. of Honolulu*, 447 F.3d 1172, 1179-80 (9th Cir. 2006). However, a party seeking to seal information in a non-dispositive motion must show only “good cause.” *Id.* at 1179-80. The rationale for the lower standard with respect to non-dispositive motions is that “the public has less of a need for access to court records attached only to non-dispositive motions because these documents are often unrelated,

1 or only tangentially related, to the underlying cause of action” and that as a result “[t]he public  
 2 policies that support the right of access to dispositive motions, and related materials, do not apply with  
 3 equal force to non-dispositive materials.” *Kamakana*, 447 F.3d at 1179; *see also TVIIM, LLC v.*  
 4 *McAfee, Inc.*, 2015 WL 5116721, at \*1 (N.D. Cal. Aug. 28, 2015) (“Records attached to non-  
 5 dispositive motions are not subject to the strong presumption of access.”) (citation omitted). Under  
 6 the “good cause” standard, courts will seal statements reporting on a company’s users, sales,  
 7 investments, or other information that is ordinarily kept secret for competitive purposes. *See*  
 8 *Hanginout, Inc. v. Google, Inc.*, 2014 WL 1234499, at \*1 (S.D. Cal. Mar. 24, 2014); *Nitride*  
 9 *Semiconductors Co. v. RayVio Corp.*, 2018 WL 10701873, at \*1 (N.D. Cal. Aug. 1, 2018) (granting  
 10 motion to seal “[c]onfidential and proprietary information regarding [Defendant]’s products” under  
 11 “good cause” standard) (Van Keulen, J.). Although the materials that Google seeks to seal here easily  
 12 meet the higher “compelling reasons” standard, the Court need only consider whether these materials  
 13 meet the lower “good cause” standard.

### 14 **III. THE ABOVE IDENTIFIED MATERIALS SHOULD ALL BE SEALED**

15 Courts have repeatedly found it appropriate to seal documents that contain “business  
 16 information that might harm a litigant’s competitive standing.” *Nixon v. Warner Commc’ns, Inc.*, 435  
 17 U.S. 589, 589-99 (1978). Good cause to seal is shown when a party seeks to seal materials that  
 18 “contain[] confidential information about the operation of [the party’s] products and that public  
 19 disclosure could harm [the party] by disclosing confidential technical information.” *Digital Reg of*  
 20 *Texas, LLC v. Adobe Sys., Inc.*, 2014 WL 6986068, at \*1 (N.D. Cal. Dec. 10, 2014). Materials that  
 21 could harm a litigant’s competitive standing may be sealed even under the “compelling reasons”  
 22 standard. *See e.g., Icon-IP Pty Ltd. v. Specialized Bicycle Components, Inc.*, 2015 WL 984121, at \*2  
 23 (N.D. Cal. Mar. 4, 2015) (information “is appropriately sealable under the ‘compelling reasons’  
 24 standard where that information could be used to the company’s competitive disadvantage”) (citation  
 25 omitted). Courts in this district have also determined that motions to seal may be granted as to  
 26 potential trade secrets. *See, e.g., United Tactical Sys., LLC v. Real Action Paintball, Inc.*, 2015 WL  
 27 295584, at \*3 (N.D. Cal. Jan. 21, 2015) (rejecting argument against sealing “that [the party] ha[s] not  
 28 shown that the substance of the information . . . amounts to a trade secret”).

1 Here, the Opposition and Exhibits 1-4 to the Opposition comprise confidential and proprietary  
 2 information regarding highly sensitive features of Google’s internal systems and operations that  
 3 Google does not share publicly. Specifically, this information provides details related to various types  
 4 of Google’s internal identifiers, projects, data structures, and data usage policies related to its products  
 5 and services. Such information reveals Google’s internal strategies, system designs, and business  
 6 practices for operating and maintaining many of its important services while complying with its legal  
 7 and privacy obligations.

8 Public disclosure of the above-listed information would harm Google’s competitive standing it  
 9 has earned through years of innovation and careful deliberation, by revealing sensitive aspects of  
 10 Google’s proprietary systems, strategies, and designs to Google’s competitors. That alone is a proper  
 11 basis to seal such information. *See, e.g., Free Range Content, Inc. v. Google Inc.*, No. 14-cv-02329-  
 12 BLF, Dkt. No. 192, at 3-9 (N.D. Cal. May 3, 2017) (granting Google’s motion to seal certain sensitive  
 13 business information related to Google’s processes and policies to ensure the integrity and security of  
 14 a different advertising system); *Huawei Techs., Co. v. Samsung Elecs. Co.*, No. 3:16-cv-02787-WHO,  
 15 Dkt. No. 446, at 19 (N.D. Cal. Jan. 30, 2019) (sealing confidential sales data because “disclosure  
 16 would harm their competitive standing by giving competitors insight they do not have”); *Trotsky v.*  
 17 *Travelers Indem. Co.*, 2013 WL 12116153, at \*8 (W.D. Wash. May 8, 2013) (granting motion to seal  
 18 as to “internal research results that disclose statistical coding that is not publically available”).

19 Moreover, if publicly disclosed, malicious actors may use such information to seek to  
 20 compromise Google’s identifier and log systems and practices. Google would be placed at an  
 21 increased risk of cyber security threats. *See, e.g., In re Google Inc. Gmail Litig.*, 2013 WL 5366963,  
 22 at \*3 (N.D. Cal. Sept. 25, 2013) (sealing “material concern[ing] how users’ interactions with the  
 23 Gmail system affects how messages are transmitted” because if made public, it “could lead to a breach  
 24 in the security of the Gmail system”). The security threat is an additional reason for this Court to seal  
 25 the identified information.

26 The information Google seeks to redact, including details related to various types of Google’s  
 27 internal identifiers, projects, data structures, and data usage policies related to its products and  
 28 services, is the minimal amount of information needed to protect its internal systems and operations

1 from being exposed to not only its competitors but also to nefarious actors who may improperly seek  
 2 access to and disrupt these systems and operations. The “good cause” rather than the “compelling  
 3 reasons” standard should apply but under either standard, Google’s sealing request is warranted.

#### 4 **IV. CONCLUSION**

5 For the foregoing reasons, the Court should seal the identified portions of the Opposition and  
 6 Exhibits 1-4 to the Opposition in their entirety.

7  
 8 DATED: October 27, 2021

QUINN EMANUEL URQUHART &  
 SULLIVAN, LLP

9 By /s/ Andrew H. Schapiro

10 Andrew H. Schapiro (admitted *pro hac vice*)  
 andrewschapiro@quinnemanuel.com  
 11 191 N. Wacker Drive, Suite 2700  
 Chicago, IL 60606  
 12 Telephone: (312) 705-7400  
 Facsimile: (312) 705-7401

13 Stephen A. Broome (CA Bar No. 314605)  
 14 stephenbroome@quinnemanuel.com  
 Viola Trebicka (CA Bar No. 269526)  
 15 violatrebicka@quinnemanuel.com  
 865 S. Figueroa Street, 10th Floor  
 16 Los Angeles, CA 90017  
 17 Telephone: (213) 443-3000  
 Facsimile: (213) 443-3100

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 555 Twin Dolphin Drive, 5th Floor  
 20 Redwood Shores, CA 94065  
 21 Telephone: (650) 801-5000  
 Facsimile: (650) 801-5100

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 24 Washington, D.C. 20005  
 Telephone: 202-538-8000  
 25 Facsimile: 202-538-8100

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*Attorneys for Defendant Google LLC*